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11 *Attorneys for Defendant FCA US, LLC*

12  
13 **STATE OF CALIFORNIA**  
14 **NEW MOTOR VEHICLE BOARD**  
15

16 MATHEW ENTERPRISE, INC., dba  
17 STEVENS CREEK CHRYSLER JEEP AND  
DODGE,

18 Plaintiff,

19 vs.

20 FCA US, LLC,

21 Defendant.  
22

**Protest Nos.: PR-2484-16, PR-2485-16, PR-2486-16, and PR-2487-16**

**MOTION TO DISMISS PROTESTS**

23 Respondent FCA US, LLC ("FCA") hereby submits this Motion to Dismiss Protest  
24 Nos. PR-2484-16, PR-2485-16, PR-2486-16, and PR-2487-16 (the "Protests").

25 **INTRODUCTION**

26 Mathew Enterprise, Inc., d/b/a Stevens Creek Chrysler Jeep Dodge Ram ("Protestant") filed  
27 its Protests with the California New Motor Vehicle Board (the "Board") alleging "constructive"  
28 termination of its dealership. Yet far from being terminated, constructively or otherwise, Protestant

1 remains in business. Indeed, a customer could buy a vehicle there today. To that end, FCA is not  
2 presently seeking to terminate Protestant's dealer agreements. For these reasons, and those set forth  
3 below, FCA respectfully requests that the Board dismiss Protestant's Protests with prejudice.

#### 4 **FACTUAL BACKGROUND**

5 FCA is the manufacturer of Chrysler, Jeep, Dodge and Ram ("CJDR") motor vehicles of  
6 which Protestant is a dealer. As a CJDR dealer, Protestant has entered into certain dealer agreements  
7 with FCA, also called Sales & Service Agreements ("SSAs"). The SSAs contain explicit provisions  
8 relative to the termination of a dealer, none of which have been implicated here with respect to  
9 Protestant.

10 Protestant claims that FCA's rejection of Protestant's relocation proposal is tantamount to a  
11 termination by FCA. Yet, Protestant continues to operate as a FCA dealer today, and FCA has not  
12 sent any notice to Protestant pursuant to the termination provisions of the SSAs or pursuant to Cal.  
13 Veh. Code § 3060.

#### 14 **LAW AND ARGUMENT**

15 The Board is a quasi-judicial administrative agency of limited jurisdiction. *BWM of N. Am.,*  
16 *Inc. v. New Motor Vehicle Bd.*, 162 Cal.App.3d 980, 994, 209 Cal.Rptr. 50 (Ct. App. 1984). It does  
17 not have plenary authority to resolve any and all disputes which may arise between a motor vehicle  
18 manufacturer and dealer. The Board's jurisdiction under Veh. Code § 3060 encompasses disputes  
19 arising over the termination, replacement or modification of a dealer agreement. Claims arising from  
20 disputes with other legal bases must be directed to a different forum. *Ri-Joyce, Inc. v. New Motor*  
21 *Vehicle Bd.*, 2 Cal. App. 4th 445, 455, 3 Cal. Rptr. 2d 546, 551-52 (1992).

22 With respect to termination actions, Cal. Veh. Code § 3060 is very specific:

23 (a) Notwithstanding Section 20999.1 of the Business and Professions Code or the  
24 terms of any franchise, no franchisor shall terminate or refuse to continue any  
25 existing franchise unless all of the following conditions are met:

26 (1) The franchisee and the board have received written notice from the  
27 franchisor...

28 (2) Except as provided in Section 3050.7, the board finds that there is good cause

1 for termination or refusal to continue, following a hearing called pursuant to  
2 Section 3066...

3 (3) The franchisor has received the written consent of the franchisee, or the  
4 appropriate period for filing a protest has elapsed.

5 Cal. Veh. Code § 3060.

6 Although a dealer can voluntarily terminate its operations, the termination of a dealer  
7 pursuant to Section 3060 refers to action taken by a manufacturer under the termination  
8 provisions of the operative dealer agreement.

9 In this case, there simply is not a termination proceeding at issue. FCA is not seeking  
10 to terminate Protestant's SSAs. Indeed, FCA has not taken a single step to terminate  
11 Protestant.

12 As Section 3060(a)(1) requires, there must be a "notice" received by the Board from the  
13 manufacturer as a condition precedent to any termination protest. Protestant correctly concedes that  
14 FCA has not provided notice of intent to terminate Protestant's SSAs. *See* November 22, 2016  
15 Protest re: Chrysler at p. 9. And the reason for this is clear – FCA has not and is not currently  
16 pursuing any termination measures against Protestant. As no such notice has been issued by FCA or  
17 received by the Board, the Board lacks jurisdiction to proceed with the Protests and the Protests  
18 should be dismissed with prejudice.

19 Moreover, Protestant's argument that FCA's rejection of Protestant's relocation proposal  
20 constitutes "constructive termination" of Protestant's SSAs does not bring this purported dispute  
21 within the purview of the Board's jurisdiction.

22 First, the Board has found that the proper forum for alleged constructive or de facto  
23 termination is civil litigation before a court of competent jurisdiction. *See Roadtrek Motorhomes v.*  
24 *California New Motor Vehicle Bd.*, No. G049534, 2016 WL 3885006, at \*7 (Cal. Ct. App. July 14,  
25 2016) ("As the ALJ recognized, the forum for [the protestant's] claim that [the manufacturer's]  
26 actions in late 2009 triggered a de facto termination of the franchises, is a civil action.").

27 In addition, constructive termination has not occurred in this case because the Protestant's  
28 dealership is still in business and operating as an FCA dealership. As Protestant points out, FCA

1 rejected Protestant's relocation proposal in early 2016. *See* November 22, 2016 Protest re: Chrysler  
2 at pp. 6-7. Now, nearly one year later, Protestant's dealership has not been "terminated" and is still  
3 up and running.


4       Given that Protestant's allegations do not concern a termination of Protestant's dealer  
5 agreement or any other issue within the Board's jurisdiction, the Board lacks authority to consider  
6 the purported dispute described in the Protests. *See Hardin Oldsmobile v. New Motor Vehicle Bd.*, 52  
7 Cal. App. 4th 585, 593-94, 60 Cal. Rptr. 2d 583, 588 (1997) ("It cannot be said that the Board has  
8 jurisdiction over statutory and common law claims not specified in the enabling legislation merely  
9 because some of the facts forming the foundation for such a claim could have been asserted as the  
10 foundation of statutory protest claims within the Board's jurisdiction."); *see also Id.* at 591 ("it is  
11 evident that the Legislature intended to limit the jurisdiction of the Board to consideration and  
12 resolution of only a circumscribed domain of matters.").

13       As such, in this case, the Board should exercise its authority to dismiss Protestant's Protests.  
14 *See Duarte & Witting, Inc. v. New Motor Vehicle Bd.* (App. 3 Dist. 2002) 128 Cal.Rptr.2d 501, 104  
15 Cal.App.4th 626. ("New Motor Vehicle Board had implied statutory authority to dismiss car dealer's  
16 protest of car manufacturer's decision to terminate one of dealer's franchises.").

17       WHEREFORE, FCA respectfully requests that the Board dismiss Protestant's Protests with  
18 prejudice.

19 Dated: January 9, 2017

Respectfully submitted,

20 

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23 **Donahue Davies LLP**

24 ~and~

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27 **Nelson Mullins Riley & Scarborough**

28 Counsel for FCA US, LLC

1 **PROOF OF SERVICE**

2 **CAPTION: MATHEW ENTERPRISE, INC., d/b/a STEVENS CREEK CHRYSLER**  
3 **JEEP DODGE AND RAM v. FCA US, LLC**

4 **BOARD: NEW MOTOR VEHICLE BOARD**

5 **PROTEST NOS.: PR-2484-16, PR-2485-16, PR-2486-16, and PR-2487-16**

6 I am employed in the County of Sacramento, State of California. I am over the age of 18  
7 years and not a party to this action. My business address is P.O. Box 277010, Sacramento,  
8 California 95827-7010.

9 On **January 9, 2017**, I served the foregoing **MOTION TO DISMISS PROTESTS** on each  
10 party in this action, as follows:

11 Law Offices of Michel J. Flanagan  
12 Michael J. Flanagan  
13 Torin M. Heenan  
14 2277 Fair Oaks Boulevard, Suite 450  
15 Sacramento, CA 95825  
16 (916) 646-9100  
17 (916) 646-9138  
18 Email: lawmjf@msh.com

19 Attorneys for Protestants

20 ☒ (BY MAIL) I caused such envelope to be deposited in the United States Mail at  
21 Sacramento, California, with postage thereon fully prepaid. I am readily familiar with  
22 the firm's practice of collection and processing documents for mailing. It is deposited  
23 with the United States postal service each day and that practice was followed in the  
24 ordinary course of business for the serve herein attested to.

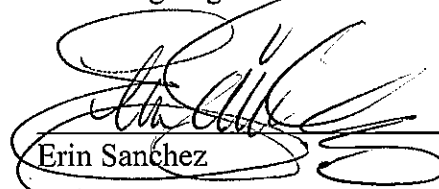
25 ☐ (BY FACSIMILE) The facsimile machine I used complied with California Rules of  
26 Court, Rule 2003, and no error was reported by the machine. Pursuant to California  
27 Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the  
28 transmission, a copy of which is attached to this Affidavit.

☐ (BY FEDERAL EXPRESS) I caused such envelope to be delivered by air courier, with  
the next day service.

☒ (BY E-MAIL) at the e-mail address listed above.

Executed on **January 9, 2017**, at Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct.

25   
26 Erin Sanchez